California Fair Political Practices Commission

MEMORANDUM

To: Chairman Getman and Commissioners Downey, Knox, Scott and Swanson

From: Holly B. Armstrong, Commission Staff Counsel
John W. Wallace, Assistant General Counsel
Luisa Menchaca, General Counsel

Re: Proposition 34 Regulations: Personal Loans (§ 85307) - Second Pre-Notice Discussion of Proposed Regulation 18530.8

Date: October 25, 2001

Introduction and Background

Government Code § 85307[1], which was enacted by Proposition 34, provides:

> "(a) The provisions of this article regarding loans apply to extensions of credit, but do not apply to loans made to a candidate by a commercial lending institution in the lender's regular course of business on terms available to members of the general public for which the candidate is personally liable.
>
> "(b) A candidate for elective state office may not personally loan to his or her campaign an amount, the outstanding balance of which exceeds one hundred thousand dollars ($100,000). A candidate may not charge interest on any loan he or she made to his or her campaign."

At its meeting on September 10, 2001, this regulation came before the Commission for pre-notice discussion.[2] In that context, the Commission considered essentially two issues: (1) whether personal loans made prior to January 1, 2001, the effective date of Proposition 34 and of section 85307, counted toward the $100,000 loan limit imposed by section 85307(b), and (2) the scope of the term "campaign" in the context of section 85307(b). The Commission made no decisions, but asked staff to conduct further research and to return the regulation with further options for a second pre-notice discussion. At its September 10, 2001, meeting, the Commission also considered regulation 18530.7, which dealt with extensions of credit. Due to the issues

---

[1] All further statutory references are to the Government Code, unless otherwise specified.
[2] An interested persons meeting was held on May 30, 2001, which was attended by a cross-section of political attorneys, representatives of the major political parties, the Franchise Tax Board, and the Secretary of State's Office.

raised at the last Commission meeting related to the interpretation of section 85307(a), staff believes that regulation 18530.7 should be considered as a separate item at a later date.

In addition to addressing the issues raised at the September 10, 2001, meeting, a new issue is presented to the Commission in this version of proposed regulation 18530.8 in subdivision (c). This subdivision arose out of the discussion at last month's meeting of the tension between subdivisions (a) and (b) of section 85307, which was later highlighted by the receipt of a request for an advice letter seeking advice on the specific questions regarding the applicability of section 85307(b) to a bank loan for which a candidate is personally liable, and which she then lent to her campaign.[3]

Proposed Regulation 18530.8

This regulation addresses subdivision (b) of section 85307, dealing with the $100,000 limit on a candidate's personal loans to his or her controlled committee.

DECISION 1 – TREATMENT OF PRE-JANUARY 1, 2001 PERSONAL LOANS

Subdivision (a), **options a and b** address the situation in which a candidate may have personal loans from previous elections that pre-date the effective date of Proposition 34. Subdivision (a) as presented in **option c** was derived from the Commission's discussion at its September 10, 2001, meeting. This option presents a hybrid of situations in which a candidate's pre-January 1, 2001, personal loans may have been made for elections held prior to January 1, 2001, or may have been made for an election to be held after January 1, 2001, which would be treated differently.

All three of the options present, essentially, a question of whether or not to apply section 85307(b) retroactively.

An impermissible "retroactive" application "applies the new law of today to the conduct of yesterday." *Rosasco v. Commission on Judicial Performance*, 82 Cal. App. 4th 315, 322 (2000). A statute is not "retroactive" merely because some of the facts upon which its application depends came into existence before its enactment. *Kizer v. Hanna*, 48 Cal. 3d 1, 7 (1989). In other words, a statute operates retroactively when it changes the legal consequences of an act *completed* before the effective date of the statute. *Florence Western Medical Clinic v. Bonta*, 77 Cal. App. 4th 493, 502 (2000). The courts in California generally disfavor giving retroactive effect to a new law. *Evangelatos v. Superior Court*, 44 Cal. 3d 1188, 1207 (1988). Thus, absent clear legislative intent to the contrary, courts generally presume that a new statute is not meant to have retroactive effect. *Id.*

[3] While this memorandum provides an analysis of sections 85307(a) and b in the context of loans to a candidate obtained from a commercial lending institution in the ordinary course of business, it does not resolve the interaction of subdivisions (a) and (b) of section 85307 as they relate to extensions of credit, which were the subject of regulation 18530.7. Those issues will be addressed at a later date.

Because section 85307(b) was adopted as part of a ballot measure, we look to the ballot pamphlet for insight into the intent of the voters with respect to retroactivity. The ballot pamphlet in this instance makes no reference to retroactive application, which supports an argument against retroactive application of the statute **(option a).** Further, in prior decisions regarding Proposition 34 issues, specifically with respect to section 85316, the Commission has decided that Proposition 34 did not apply to conduct or events that occurred prior to January 1, 2001, i.e. the effective date of the Act. A consistent approach to section 85307(b) also supports an argument in favor of **option a.**

> **{Decision 1, option a}**[(a) Any personal loan made before January 1, 2001, by a candidate for elective state office *does not* count toward the $100,000 loan limit of subdivision (b) of Government Code section 85307.] (emphasis added.)

However, in support of **option b**, the retroactive application of the statute, is the following language from section 85307:

> "(b) A candidate for elective state office may not personally loan to his or her campaign an amount, *the outstanding balance of which* exceeds one hundred thousand dollars ($100,000)." (emphasis added.)

If the highlighted phrase, "*the outstanding balance*" is to be given effect in this context, it would seem that any pre-January 1, 2001, balance from prior loans would have to be carried over into 2001. Otherwise, the "outstanding balance" language would be meaningless in the context of loans made on January 1, 2001. On the other hand, the language could be referring to the aggregation of outstanding loans made after January 1, 2001, since presumably multiple loans could be made to a candidate's campaign bank account even after January 1, 2001.

The text of **option b** is nearly identical to the text of **option a**:

> **{Decision 1, option b}**[(a) Any personal loan made before January 1, 2001, by a candidate for elective state office *does* count toward the $100,000 loan limit of subdivision (b) of Government Code section 85307.] (emphasis added.)

As stated above, **option c** is an effort by staff to memorialize an option suggested by the Commission in the course of its discussions at its last meeting.

> **{Decision 1, option c}**[(a) Any personal loan made before January 1, 2001, by a candidate for elective state office to his or her committee organized for an election to be held after January 1, 2001, is subject to the $100,000 loan limit of subdivision (b) of

> Government Code section 85307, to the extent that the candidate may not make any additional personal loans to his or her campaign unless and until the loan balance is less than $100,000, and then any personal loans may only be in an amount such that the balance of the loan does not exceed $100,000. However, any personal loan balance in excess of $100,000 as a result of a personal loan made by the candidate prior to January 1, 2001, shall not result in a violation of the Act.]

This provision focuses on the date of the election rather than the date of the loan. The most persuasive argument in favor of **option c** is that it dovetails nicely with **Decision 2, option a,** in the event the Commission should select that option. However, there are several difficulties with **Decision 1, option c,** which must be addressed.

First, section 85306(b) provides:

> "Notwithstanding subdivision (a), a candidate for elective state office, other than a candidate for statewide elective office who possesses campaign funds on January 1, 2001, may use those funds to seek elective office without attributing the funds to specific contributors."

The portion of **Decision 1, option c** that would count a candidate's personal loans made prior to January 1, 2001, if they were made for use in an election after January 1, 2001, would appear to be inconsistent with section 85306(b).

Second, it may be difficult, if not impossible, to account for, in many instances, which election some loan proceeds are actually used for. For example, a candidate may have made a loan to his or her campaign for an election in 2000 and have funds remaining from the loan after the election. The candidate then redesignates his or her committee for the 2002 election to the same office, thus redesignating the funds remaining in the 2000 campaign committee bank account for the 2002 election.[4] How would such loan proceeds ever be counted? In a case such as this, the personal loan was clearly made prior to January 1, 2001, and it was originally made for use in an election held prior to January 1, 2001. However, although a portion of the proceeds of the loan will eventually be used for an election to be held after January 1, 2001, that loan was reported on Schedule B of the candidate's Form 460 for the 2000 election. It will never be reported as a loan for the 2002 election, having already been reported once. Therefore, there will be no way to track certain loans used in post-January 1, 2001, elections, thus making **option c** difficult to enforce.

[4] This will be an issue even assuming the Commission confirms its preliminary decision made at the October 11, 2001, meeting, not to permit redesignation of committees for future elections, because some candidates have already redesignated their committees for the 2002, and even the 2004 elections.

Staff Recommendation: Staff continues to recommend **option a**. It is staff's opinion that there is insufficient authority for retroactive application of the statute.[5] **Option a** would also be consistent with the Commission's decisions regarding the application of section 85316.

DECISION 2 – PROPER APPLICATION OF PERSONAL LOAN LIMIT

In **Decision 2, options a and b,** the Commission is asked to decide whether the $100,000 personal loan limit imposed by section 85307 is applicable on a "per election" basis, with a candidate receiving a new $100,000 limit for each election, or whether the $100,000 limit applies to all of a candidate's loans to his or her controlled committee formed for the purpose of seeking a specific elective state office, comprising both the primary and the general elections. This decision point presents a problem of statutory construction. A brief review of governing principles of statutory construction may be useful at the outset.

Statutory Construction Overview

"In statutory construction cases, our fundamental task is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute." *Estate of Griswold*, No. S087881, 2001 WL 694081, at *3 (Cal. Sup. Ct., June 21, 2001). However:

> "The motive or purpose of the drafters of a statute is not relevant to its construction absent reason to conclude that the body which adopted the statute was aware of that purpose and believed the language of the proposal would accomplish it. [Citations omitted.] The opinion of drafters or of legislators who sponsor an initiative is not relevant since such opinion does not represent the intent of the electorate and we cannot say with assurance that the voters were aware of the drafters' intent." [Citations omitted.] (*Taxpayers to Limit Campaign Spending v. Fair Political Practices Commission*, 51 Cal. 3d 744, 764, fn. 10 (1990).)

The proper approach to construction of a statute is succinctly outlined as follows:

> "We begin by examining the statutory language, giving the words their usual and ordinary meaning. [Citations omitted.] If the terms of the statute are unambiguous, we presume the lawmakers meant what they said, and the plain meaning of the language governs. [Citations omitted.] If there is ambiguity, however, we may then look to extrinsic sources, including the ostensible objects to be

[5] Pending Commission action on this issue, the *Valencia* Advice Letter, No. A-00-273, was issued on April 11, 2001, in which staff advised Assemblymember Anthony Pescetti that the prohibition of section 85307(b) did not apply to any personal loan made by a candidate before January 1, 2001. Therefore, if the Commission chooses to select **option b** or **c**, the *Valencia* Advice Letter should be rescinded.

> achieved and the legislative history. [Citation omitted.] In such cases, we select the construction that comports most closely with the apparent intent of the Legislature, with a view of promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences." [Citations and internal quotation marks omitted.] (*Estate of Griswold*, *supra.)*

In construing the meaning of section 85307(b), it is first necessary to examine the statutory language, giving the words their usual and ordinary sense, to determine whether the statute has a clear, unambiguous meaning. If the statute has an unambiguous meaning, then "plain meaning" is applied and the interpretational task requires nothing further.

If, on the other hand, the statute is "ambiguous" (that is, capable of more than one reasonable interpretation)[6], it is necessary to turn for assistance in interpretation to "extrinsic sources including the ostensible objects to be achieved and the legislative history." (*Estate of Griswold, supra*, 2001 WL 694081, at *3.)

The remainder of this memorandum relating to Decision 2 is presented on the assumption that section 85307(b) is ambiguous, and that we must resort to extrinsic evidence of its meaning. On this point, although Proposition 34 was a legislative initiative, the Legislature's intent in drafting section 85307(b) is irrelevant since there is no indication that the voters had any idea of the drafters' intent. (*Taxpayers, supra*, 51 Cal.3d at 764, n. 10.) When seeking to ascertain the voters' intent, the normal procedure is to review the voter information pamphlet that is distributed to all registered voters in the state.

The Official Voter Information Guide for the November 2000 election (containing the official summary of Proposition 34, as well as the ballot arguments for and against the measure), at the Analysis by the Legislative Analyst section states the following:

> "Under this measure, candidates would be allowed to give unlimited amounts of their own money to their campaigns. However, the amount candidates could loan to their campaigns would be limited to $100,000 and the earning of interest on any such loan would be prohibited."

(Official Voter Information Guide, November 2000 Election, pg. 14.)

The following statement regarding the subject matter of section 85307(b), is found in the Arguments in Favor of Proposition 34, in the Official Voter Information Guide:

---

[6] "When the language of a statute is 'clear and unambiguous,' and thus not reasonably susceptible of more than one meaning, there is no need for construction and courts should not indulge in it." *People v. Camarillo*, 84 Cal.App. 4th, 1386, 1391 (2000).

> "PROPOSITION 34 CLOSES LOOPHOLES FOR WEALTHY CANDIDATES
>
> "Wealthy candidates can loan their campaigns more than $100,000 then have special interests repay their loans. Proposition 34 closes this loophole."

The ballot pamphlet thus does not directly address the question of whether the $100,000 loan limit applies specifically to the primary and general elections. It may help the Commission in its analysis, however, in ways addressed later in this memorandum.

Other Uses and Constructions of "Campaign" in the Political Reform Act

Because section 85307(b) specifically says that "a candidate . . . may not personally loan to his or her ***campaign*** an amount, the outstanding balance of which exceeds $100,000," (emphasis added), the Commission asked staff to conduct further research into the other uses and interpretations of the word "campaign" within the Political Reform Act (hereinafter "Act"). Attached as Appendix A[7] is a list of statutory uses and contexts for use of the word "campaign" in the Act.

Despite the wide variety of usages and the numerous contexts in which the word "campaign" appears in the Act, nowhere in the body of advice letters, regulations and opinions that comprise the Commission's prior interpretations of the Act is there any guidance as to the scope or meaning of the word in this context. It rarely appears by itself in the Act, more often modifying another word that has a primary meaning, as demonstrated by the extensive list set forth in Appendix A.[8] In other words, staff found nothing in the Act that suggests that there exists some specialized meaning to the word "campaign" in the context of section 85307(b).

Decision 2, option a, would require the candidate to aggregate all of his or her personal loans to his or her controlled committee organized for the purpose of seeking a specific elective state office, and would essentially treat the term "campaign" as including both the primary and the general elections.

> **{Decision 2, Option a}**[(b) The $100,000 personal loan balance specified by subdivision (b) of Government Code section 85307 as a candidate's personal loan limit applies to the aggregate amount of all personal loans made by the candidate to his or her controlled committee formed for the purpose of seeking an elective state

[7] The list of Government Code sections in Appendix A in which the word "campaign" is used does not include the subdivisions and subsections, many of which are numerous, in which the word also appears.

[8] In many cases the word is mere surplusage and, if omitted, in no manner changes the scope or effect of the statute in which it appears. (See e.g., section 82015(b)(2)(C)(v).)

> office, including the primary election and the general election for the same office.]

This option would have the advantage of eliminating the ambiguity that exists in trying to delineate between expenditures made for the primary and general elections. It also has the distinct advantage of identifying specific parameters for the term "campaign," at least for purposes of section 85307(b).[9] Further, requiring a candidate to keep his or her personal loan balance to a maximum of $100,000 for the entire election cycle from primary through the general election cycle may be in keeping with the voters' intent, as demonstrated by the Voter Information Guide.

The Voter Information Guide's proclamation that Proposition 34 closes loopholes for wealthy candidates by limiting wealthy candidates' loans to their campaigns to $100,000 would support a narrower, rather than a broader construction of the statute. Therefore, a stricter construction of section 85307(b) that minimizes the overall amount of the loan a candidate can make to his or her campaign for a given office (i.e. both the primary and general election) may comport with the voters' intent, as expressed generally in the Voter Information Guide.

Decision 2, option b, provides the "per election" option, by which a candidate would be permitted a new $100,000 loan balance for each election in which he or she participated.

> **{Decision 2, Option b}** (b) The $100,000 personal loan balance specified by subdivision (b) of Government Code section 85307 as a candidate's personal loan limit applies to a candidate's campaign on a "per election" basis, which is renewed with each new election.

This option is supported by the overall "per election" approach the Commission has taken in implementing Proposition 34. Further, it may be argued that the "loophole" referred to in the ballot pamphlet argument, by which wealthy candidates loan themselves funds in excess of $100,000 and then have special interests pay off the loans, has been sufficiently closed by the imposition of contribution limits. Therefore, allowing a candidate to loan himself or herself $100,000 in the primary and then an additional $100,000 in the general election does not have the potential for corruption that it once had.

On the other hand, the Commission has aggregated the primary and general elections in some contexts, including carry over of funds in section 85317. Allowing separate loans in those two elections, in light of the liberal carry over rules of section 85317, could lead to abuse. In addition, section 85318 treats a connected primary and general election as the same endeavor and allows a single campaign account. Both of these factors support **option a**.

Staff Recommendation: Staff makes no recommendation on this proposed regulation.

---

[9] This construction of section 85307(b) is also consistent with the Commission's interpretation of section 85317 at the October 11, 2001, meeting regarding carry over of contributions from the primary to the general election.

DECISION 3 – TREATMENT OF BANK LOANS UNDER SECTION 85307(b)

The issues addressed in subdivision (c) arose out of the discussion at the Commission's September 10, 2001, meeting, and was also highlighted by the recent receipt of a request for advice asking questions related directly to the treatment under section 85307(b) of a bank loan to a candidate if the candidate lends the proceeds of the bank loan to her campaign.

This decision point presents another issue of statutory construction for the Commission to consider that requires a review of the relevant underlying statutes.

Pursuant to section 82015(a):

> "'Contribution' means a *payment*, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received, unless it is clear from the surrounding circumstances that it is not made for political purposes." (emphasis added.)

"Payment," pursuant to section 82044, means "a payment, distribution, transfer, *loan*, advance, deposit, gift or other rendering of money, property services or anything else of value, whether tangible or intangible." (emphasis added.)

Therefore, reading sections 82015 and 82044 together, a loan, which is a payment, is a contribution under the Act. For example, a loan from an individual that a candidate put into his personal bank account and later transferred to his campaign account was reportable and subject to the Proposition 73 contribution limits. (Perata, FPPC No. 2000/ 156.) Because a loan is a contribution, a loan would ordinarily be subject to the contribution limits set forth in sections 85301 and 85302.

However, section 84216 provides the following exception:

> "(a) Notwithstanding Section 82015, a loan received by a candidate or committee is a contribution unless the loan is received from a commercial lending institution in the ordinary course of business, or it is clear from the surrounding circumstances that it is not made for political purposes."

Accordingly, a loan to a candidate from a commercial lending institution is not a contribution.

A loan from a candidate's personal funds to his or her campaign, however, would still be a contribution to the campaign, but would not be subject to the contribution limits. Pursuant to section 85301(d):

> "The provisions of this section do not apply to a candidate's contributions of his or her personal funds to his or her own campaign."

Instead, with respect to personal loans, section 85307(b) imposes a limit of $100,000 on the outstanding balance of the loan that a candidate may make to his or her campaign.

Section 85307(a) provides that "[t]he provisions of this article regarding loans . . . do not apply to loans made to a candidate by a commercial lending institution in the lender's regular course of business on terms available to members of the general public for which the candidate is personally liable." Further, subdivision (a) contains no limiting language as to its applicability, whereas, subdivision (b) is limited in its application to candidates for elective state office. Given these issues as discussed below, the question then arises whether the $100,000 limit imposed by section 85307(b), applies to the proceeds of a bank loan made to a candidate and then loaned by the candidate to his or her committee.

Subdivision (c) provides the opposing options in **options a** and **b**, with **option a** providing that such proceeds *do* count toward the $100,000 personal loan limit imposed by section 85307(b), and **option b** providing that such proceeds *do not* count toward the $100,000 limit.

> (c) The proceeds of a loan made to a candidate by a commercial lending institution for which the candidate is personally liable, pursuant to the terms of subdivision (a) of Government Code section 85307, which the candidate then lends to his or her campaign **{Decision 3, option a/option b}** [does/does not] count toward the $100,000 personal loan limit imposed by subdivision (b) of Government Code section 85307.

Argument in Support of Option A

In the past, staff has advised, with respect to bank loans, that the bank be reported as the source of the funds, and that the candidate is not the source for reporting purposes. (*McConnell* Advice Letter, No. A-94-047; *Parrish* Advice Letter, No. I-98-069; Section 84216(b).) However, this prior advice was limited to reporting purposes. The purpose of section 85307 was clearly spelled out in the Voter Information Guide, to limit the amount of money a wealthy candidate can loan his or her campaign to $100,000. Because the two functions are so disparate and because analysis of different statutes was involved, staff feels that the earlier advice is not controlling. Rather staff believes that separate rules for the contribution limits of Proposition 34 may be justified and supportable. Thus, it would still be possible to have the bank reported as the source of the loan, and still apply the bank loan to the $100,000 personal loan limit, if the Commission chose that option. Staff believes that the instructions to the necessary forms and

informational material could be sufficiently clear to educate the public as to the requirements of the regulations.

The strongest argument in support of **option a** is that it appears to be consistent with the policy expressed in the Voter Information Guide, i.e. to level the playing field by maintaining the integrity of the $100,000 personal loan limit imposed by section 85307(b). As stated *supra*, "In statutory construction cases, our fundamental task is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute." *Estate of Griswold*, No. S087881, 2001 WL 694081, at *3 (Cal. Sup. Ct., June 21, 2001).

Pursuant to section 84216, a loan ***to a candidate*** from a commercial lending institution in the ordinary course of business is not a contribution to the candidate's campaign. Pursuant to section 85307(b), a loan ***from a candidate*** to his or her campaign is limited to an outstanding balance of $100,000 at any given time. Therefore, by analyzing the process as two separate transactions, it is possible to conclude that when a commercial lending institution makes a loan ***to a candidate***, the funds become an asset of the candidate in the first transaction. In the second transaction, the candidate converts the funds he or she received from the bank, and ***the candidate loans the funds to his or her campaign***, thus making the funds subject to section 85307(b).

Section 85307(a)'s exclusion of loans from a commercial lending institution from application of provisions regarding loans may refer to sections 85301 and 85302, which are the contribution limits provisions. Under ordinary circumstances, loans are contributions. However, a loan from a commercial lending institution for which the candidate is personally liable is an exception to that rule, and, pursuant to section 85307(a), the contribution limits do not apply to these loans.

Another argument in support of **option a** is that if the loan is not considered a contribution of a candidate's personal funds, the voluntary expenditure limits would never be lifted as long as a candidate used monies obtained through a bank loan. (Section 85402.)

Argument in Support of Option B

However, there are factors that must be examined that support adoption of **option b** rather than **option a**.

Section 85307(a) states:

> "The provisions of this article regarding loans . . . do not apply to loans made to a candidate by a commercial lending institution in the lender's regular course of business on terms available to members of the general public for which the candidate is personally liable."

While one might argue that "the provisions of this article regarding loans" refers to more than just section 85307(b), the term "loan" is not found elsewhere in the article. Therefore, one

cannot escape the fact that it must, at a minimum, include section 85307(b) within its scope. This may lead to the simple conclusion that section 85307(b) cannot apply to loans obtained by a candidate from commercial lending institutions in the ordinary course of business at all.

As illustrated by the roadmap of statutes listed at the beginning of this section, a loan from a commercial lending institution to a candidate in the ordinary course of business is not a contribution. One must question, then, whether a loan from a commercial lending institution can be subject to any contribution limits. The $100,000 personal loan limit set forth in section 85307(b) is, essentially, a contribution limit set on a candidate's personal loan of funds to his or her own campaign. If a loan from a commercial lending institution to a candidate in the ordinary course of business is not a contribution, there may be no statutory authority within the Act for the Commission to impose limits on those funds even when the candidate uses those funds in his or her campaign.

As discussed above, under one reading of section 85307(a), section 85307(b) is inapplicable to loans to a candidate from a commercial lending institution. Also, pursuant to section 84216, a loan ***to a candidate*** from a commercial lending institution in the ordinary course of business is not a contribution to the candidate's campaign. Pursuant to section 85307(b), a loan ***from a candidate*** to his or her campaign is limited to an outstanding balance of $100,000 at any given time. However, by analyzing the process of a candidate taking a loan from a commercial lending institution and lending it to his or her campaign as ***one*** transaction instead of two separate transactions, as discussed under **option a**, the conclusion is that the funds are proceeds of a bank loan that are not subject to the limits imposed by section 85307(b).

Staff Recommendation: Staff makes no recommendation on this issue. Staff, however, believes that a determining factor is how the Commission views the loan transaction in light of the discussion above.

The purpose of subdivision (d) is to clarify that the balance of the personal loans may not, at any one time, exceed $100,000, but that additional loans may be made at any time when the loan balance is below the $100,000 limit. This subdivision was added merely to clarify the variable nature of the concept of the "loan balance" subject to the limits of section 85307.